Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1914 of 2001
(Old No. 1461 of 1988)

Puran Singh
S/o Bache Singh
Patti Malla Syunara, District Almora ....Appellant

Versus

State .....Respondent

Shri R.K. Shah and Mr. K.S. Mehta, Advocates for appellant.
Shri H.C. Pande, Addl. Government Advocate for the respondent.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under section 374 (2) of Code of Criminal Procedure, 1973 (herein-after for brevity referred as Cr.P.C.), is directed against the judgment and order dated 13.06.1988, passed in Sessions Trial No. 64 of 1987, by learned Sessions Judge, Almora, whereby appellant Puran Singh is convicted under Section 302 of Indian Penal Code, 1860 (herein after referred as I.P.C.) and sentenced to imprisonment for life.

2. We heard learned counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that appellant Puran Singh, resident of village Kumsaon, District Almora

was married to Basanti Devi (deceased), daughter of Narain Singh, resident of village Khankar. The marriage had taken place between the two about six years before the date of the incident. It is alleged by the prosecution that after the marriage, Basanti Devi was ill-treated by her in-laws. She used to disclose this on her visit to her father's place. She also used to tell her parents that her in-laws used to say that they would remarry their son elsewhere. On 01.04.1985, Bache Singh, father of appellant Puran Singh lodged a report (Ext. A-10) with Patwari, Patti Bhaisori That his daughter-in-law Basanti Devi was missing since 26.03.1985. (In Uttaranchal hills, certain revenue officers are given powers of police by the State). On 11.04.1985, Narain Singh (P.W. 6), father of Basanti Devi went to her husband's house to take her for Baisakhi festival. But her in-laws told that Basanti Devi had gone to Kangar china. When Basanti Devi did not come to her parents place, on the occasion of Baisakhi, Narain Singh (P.W. 6) became suspicious about her whereabouts. He lodged First Information Report (Ext. A-2) on 19.04.1985 with the Patwari that he has a suspicion that her daughter has been murdered. P.W. 9 Jagdeesh lal Verma, the then Patwari, Bhaisori, prepared the check report (Ext. A-11) on the basis of First Information Report and started the investigation. On 20.04.1985, during the search of Basanti Devi, on pointing out of appellant Puran Singh, dead body of his wife was found in Shikari Dal. The Investigating Officer along with the witnesses and P.W. 8 Harsh Singh Rawat, the then Patwari of Jhijhad, went to said

place, recovered the dead body and prepared its inquest report (Ext. A-8). He prepared the memo (Ext. A-3) regarding the identification of dead body, sample seal (Ext. A-6) and letter (Ext. A-7) to Chief Medical Officer, requesting for post mortem examination of the dead body. On the next day i.e. on 21.04.1985, on the pointing out of appellant Puran Singh, it is alleged that 'BARIYATH' (a sharp edged heavy weapon, used by villagers for cutting the bushes) was recovered by which he killed his wife and memo (Ext. A-9) was prepared regarding the recovery. The post mortem examination of the dead body was conducted by P.W. 5 Dr. H.G.S. manral, who could not give any opinion as to the cause of death of the deceased. The Investigating Officer after recording the statements of the witnesses, submitted charge sheet (Ext. A-14) against the accused Puran Singh before the Magistrate concerned.

4. The learned Magistrate, on receipt of charge sheet, after giving necessary copies to the accused, committed the case, for trial, to the Court of Sessions. Learned Sessions Judge, after hearing the prosecution and the accused, framed charge of offence punishable under Section 302 I.P.C. against accused Puran Singh that he intentionally caused death of his wife. The accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Prem Singh Jeena, Pradhan of village Sunoli, a witness of the inquest report (declared hostile), P.W. 2 Lal Singh, resident of village Haroli, another witness of the inquest report (declared hostile), P.W. 3 Kisan Singh, resident

of village Kumsaon, witness of recovery of BARIYATH (declared hostile), P.W. 4 Kesar Singh, resident of village Kumsaon, another witness of the recovery of BARIYATH (declared hostile), P.W. 5 Dr. H.G.S. Manral, who conducted the autopsy on the dead body, P.W. 6 Narain Singh, father of the deceased, P.W. 7 Hayat Singh, uncle of the deceased, P.W. 8 Harsh Singh Rawat, Patwari of village Jhijhand and P.W. 9 Hagdeesh Lal Verma, Patwari (Investigating Officer). All the documentary and oral evidence was put to the accused persons, as required under Section 313 of Cr.P.C. by the trial court. In reply to which, the accused (appellant) Puran Singh has said that he got married to Basanti Devi, 11 years before the alleged incident. He has admitted that Narain Singh did come to his village on 11.04.1985. However, he has denied all other evidence put to him. No evidence in defence was adduced on behalf of the accused. The trail court after hearing the prosecution and the defence found accused Puran Singh guilty of murder of his wife and convicted him under Section 302 of Indian Penal Code. Learned Sessions Judge, after hearing on sentence and sentence the convict to imprisonment for life. Aggrieved by the judgment and order dated 13.06.1988, passed by the trail court, the convict Puran Singh preferred an appeal before the Allahabad High court in the year 1988, from where it is received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here what P.W.5 Dr. H.G.S. Manral conducted autopsy of the dead body, recovered by the Investigating Officer. Post mortem examination report (Ext. A-1), shows that in the dead body, brought before the Medical Officer, following parts were found:-

1. **Tewlfth rib of right side was present.**
2. **Humerous, radius and ulna of both sides were present.**
3. **Nails were present.**
4. **Femur, tibia, fibula of right side were present.**
5. **Whole vertebral column was present.**
6. **Pelvis bone and sacrum present without any tissue.**
7. **Mandible and maxilla of both sides were present.**

On internal examination, the left temporal, frontal occipital bones were found to be fractured. The bones were blackish in colour and the margins of the bones were see-saw type. Since it was a skeleton, therefore, the Medical Officer could not ascertain the cause of death. On chemical examination only this much could be ascertained from the bones that it was of a female person, aged 25 years or above. But cause of death could not be ascertained even by Chemical Examiner.

6. From the evidence of Medical Officer and that of Chemical Examiner, it is clear that cause of death could

not be ascertained by either of the two. It is not a case of direct evidence but of circumstantial one. It is settled principle of law that in the case of circumstantial evidence, there should be complete chain of circumstances, indicating that there is only one probability that it is the accused and the accused alone, who has committed the crime. Merely for the reason that deceased was wife of the accused, he cannot be convicted for her murder.

7. According to the prosecution, the dead body of the deceased and 'BARIYATH' (a sharp edged weapon, used by villagers for cutting bushes) were recovered on the pointing out of the accused. But the same is not proved on the record. Two witnesses, namely P.W. 1 Prem Singh Jeena and P.W. 2 Lal Singh, were examined by the prosecution to prove the fact that the dead body was recovered on pointing out of the accused but both of these witnesses thought have corroborated that some bones were recovered before them from Shikari Dal, but both of them have denied that these bones were recovered on pointing out of the accused. Both these witnesses were declared hostile.

In out opinion merely on the basis of statements of Patwaris (P.W. 8 Harsh Singh Rawat and P.W. 9 Jagdeesh Lal Verma), it cannot be said that the recovery of the bones was proved beyond reasonable doubt that the same was recovered on pointing out of appellant Puran Singh, as e independent witnesses have not supported it.

8. Similarly, recovery of BARIYATH on the pointing out of the accused, cannot be said to have proved beyond reasonable doubt, as P.W. 3 Kishan Singh and P.W. 4 Kesar Singh have not supported the prosecution story on this point. They have been declared hostile. As such, on this point also, the evidence of P.W. 8 Harsh Singh Rawat and P.W. 9 Jagdeesh Lal Verma is not corroborated by the independent witnesses.

9. In the above circumstances, on the record, neither the cause of death of the deceased is proved nor is it proved beyond reasonable doubt that a recovery of bones of that of BARIYATH was made on the pointing out of the accused. It is pertinent to mention her that much before the First Information Report was lodged by complainant P.W. 6 Narian Singh, Bache Singh (father of the accused) had lodged information with the Patwari that his daughter-in-law is missing. As such, assuming for a moment that the bones recovered, were of the deceased, it cannot be ruled out that she might have fallen down from a hill in Shikari Dal. It has come on the record, in the statements of the witnesses, that where the dead body was found, it was a dangerous hillock.

10. For the reasons, as discussed above, we are of the view that the learned trial court has not appreciated the evidence on record with the correct approach. Rather, it appears that the trial court has based the impugned conviction mainly on the evidence of the Investigating

Officer, which is not the correct approach. We are of the view that the prosecution has failed to prove beyond reasonable doubt, the charge framed against the appellant that he has committed murder of his wife. Accordingly, the appeal deserves to be allowed. The same is allowed. The judgment and order dated 13.06.1988, passed by the then learned Sessions Judge, Almora in Sessions Trail No. 64 of 1987, is set aside. Conviction of appellant and sentence awarded against him by the trail court are also set aside. He is acquitted of the charge of offence, punishable under Section 302 I.P.C. He is on bail. He need not surrender. His sureties are discharged.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 15.07.2006

Sweta